

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

NEIMAN MARCUS GROUP LTD LLC, *et al.*,

Debtors.

Chapter 11

Case No. 20-32519 (DRJ)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF AMAZON TO
SCHEDULE OF ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED
LEASES**

Amazon.com, Inc. and Amazon Web Services, Inc. (“AWS”)(and collectively, “**Amazon**”), hereby file their limited objection and reservation of rights (the “**Limited Objection**”) to the *Schedule of Assumed Executory Contracts and Unexpired Leases* (the “**Schedule**”) filed by The Neiman Marcus Group LLC (“**Neiman Marcus**”) and its debtor-affiliates (collectively, with Neiman Marcus, the “**Debtors**”) as Exhibit D to the *Plan Supplement for the Debtors’ First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1513]¹ and, in support thereof, submits as follows:

PRELIMINARY STATEMENT

AWS and Neiman Marcus Group, Inc. (“NMGI”) are parties to an AWS Enterprise Agreement dated April 25, 2017 (the “EA Agreement”) under which AWS provides cloud

¹ The Debtors and Amazon agreed to extend the deadline for filing this objection to August 31, 2020 through email correspondence with counsel.

computing and cloud storage services to Neiman Marcus. In the plan supplement, the Debtors do not appear to identify the EA Agreement for assumption or rejection, but propose to assume and assign other contracts between the debtors and Amazon.com set forth on Exhibit “A” hereto (collectively, the **“Proposed Assumed Amazon Contracts”**).

Amazon requested from the Debtors copies of the Proposed Assumed Contracts, and has been provide with a copy of the EA Agreement, Amendment 1 thereto and an Statement of Work which expired in June 2019. Amazon understands that the Debtors intend to assume the EA Agreement with AWS as amended by Amendment 1, but no other agreements with Amazon. Amazon is not aware of any other executory contracts with the Debtors other than the EA Agreement.

BACKGROUND

1. Under the Debtors proposed First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (Dkt. No. 1388)(the “Plan”), all of the Debtors executory contracts, including those identified as assumed on the Schedule are deemed assumed on the Plan effective date unless such contracts were previously rejected, expired or terminated.

2. The Schedule identifies contracts with Amazon as executory contracts that the Debtors intend to assume with corresponding proposed cure amounts as follows:

“Master Services Agreement” with Amazon.com asserting a cure amount of \$935K

“Statement of Work” asserting a cure amount of zero.

“Supporting Documents” asserting a cure amount of zero.

3. Amazon files this Limited Objection to confirm the contracts the Debtors intend to assume and the cure amounts relating thereto.

ARGUMENT

A. The Debtors Must Cure Existing Defaults Under the Assumed Amazon Contracts and Provide Adequate Assurance of Future Performance.

4. Section 11 U.S.C. § 365(b)(1) provides that if there has been a default in an executory contract of the debtor, it cannot be assumed unless, at the time of assumption of such contract, the debtor cures or provides adequate assurance that it will promptly cure such default. The debtor must compensate, or provide adequate assurance that it will promptly compensate, its contract counterparty of any actual pecuniary loss resulting to such party from the default. In addition, the debtor must provide adequate assurance of future performance under such contract.

5. To the extent the Debtors intend to assume the EA Agreement, AWS has provided the Debtors with statements of account and backup invoices reflecting cure obligations of \$1,751,364.64, for billings through August 2, 2020. Of these amounts, \$1,207,202.63 will be due as of the initial hearing on confirmation of the debtor's plan of reorganization. Amazon hereby objects, to the extent the Debtor's propose a lesser cure amount.

//

//

//

CONCLUSION

WHEREFORE, Amazon respectfully requests that the Court condition assumption and assignment of the Proposed Assumed Amazon Contracts on the payment of cure of all amounts due as of assumption and grant such other relief as is just and proper.

Dated: August 31, 2020

K&L GATES LLP

/s/ Artoush Varshosaz

Artoush Varshosaz

TX Bar No. 24066234

1717 Main Street, Ste 2800

Dallas, TX 75201

Phone: (214) 939-5659

Fax: (214) 939-5849

artoush.varshosaz@klgates.com

*Counsel to Amazon.com Inc. and Amazon
Web Services*

CERTIFICATE OF SERVICE

I, Artoush Varshosaz, hereby certify that the forgoing objection was served on the parties listed below via U.S. Mail and on those who consented to electronic service through the CM/ECF system.

Anup Sathy, P.C.
Chad J. Husnick, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

Matthew C. Fagen
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022

Matthew D. Cavanaugh
Jennifer F. Wertz
Kristhy M. Peguero
Veronica A. Polnick
JACKSON WALKER LLP
1401 McKinney Street, # 1900
Houston, TX 77010

Hector Duran
Clarissa Waxton
OFFICE OF THE US TRUSTEE
FOR
THE SOUTHERN DISTRICT
OF TEXAS
515 Rusk Street, Suite 3516
Houston, TX 77002

Ryan J. Maierson
Michael J. Chambers
Latham & Watkins LLP
811 Main Street, Suite 3700
Houston, TX 77002

Jeff Bjork
Latham & Watkins LLP
355 South Grand Avenue, # 100
Los Angeles, CA 90071-1560

Joshua A. Feltman
Emil A. Kleinhaus
Michael S. Benn
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Andrew N. Rosenberg
Alice Belisle Eaton
Paul, Weiss, Rifkind,
Wharton & Garrison LLP
1285 Avenue of the
Americas
New York, NY 10019-6064

Dennis F. Dunne
Michael Price
Milbank
55 Hudson Yards
New York, NY 10001-2163

Adam R. Moses
Milbank
2029 Century Park East, 33rd
Floor
Los Angeles, CA 90067-3019

Jasmine Ball
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

DATED this 31st day of August, 2020.

/s/ Artoush Varshosaz
Artoush Varshosaz

EXHIBIT A

AWS ACCOUNT NUMBER	CUSTOMER NAME	SOR Name	COMMERCIAL INVOICE NUMBER	INVOICE TYPE	INVOICE DATE	DUE DATE	INVOICE CURRENCY CODE	INVOICE AMOUNT	AMOUNT DUE REMAINING	INVOICE STATUS	Pre Bankruptcy	Post Bankruptcy
124623090869	Neiman Marcus	AMAZON.COM, INC.	395240705	INV	3/2/2020	4/1/2020	USD	117	117	Open	117.00	-
124623090869	Neiman Marcus	AMAZON.COM, INC.	408394637	INV	3/3/2020	4/2/2020	USD	355061.38	355061.38	Open	355,061.38	-
124623090869	Neiman Marcus	AMAZON.COM, INC.	424578437	INV	4/3/2020	5/3/2020	USD	305293.29	305293.29	Open	305,293.29	-
124623090869	Neiman Marcus	AMAZON.COM, INC.	419022337	INV	4/3/2020	5/3/2020	USD	111.03	111.03	Open	111.03	-
124623090869	Neiman Marcus	AMAZON.COM, INC.	441801149	INV	5/2/2020	6/1/2020	USD	107.45	107.45	Open	107.45	-
124623090869	Neiman Marcus	AMAZON.COM, INC.	452891769	INV	5/3/2020	6/2/2020	USD	274483.66	274483.66	Open	274,483.66	-
124623090869	Neiman Marcus	AMAZON.COM, INC.	466016557	INV	6/2/2020	7/2/2020	USD	111.05	111.05	Open	25.08	85.97
124623090869	Neiman Marcus	AMAZON.COM, INC.	472997381	INV	6/3/2020	7/3/2020	USD	271917.74	271917.74	Open	61,400.78	210,516.96
124623090869	Neiman Marcus	AMAZON.COM, INC.	501088313	INV	7/3/2020	8/2/2020	USD	94.32	94.32	Open	-	94.32
124623090869	Neiman Marcus	AMAZON.COM, INC.	496465493	INV	7/3/2020	8/2/2020	USD	263495.78	263495.78	Open	-	263495.78
124623090869	Neiman Marcus	AMAZON.COM, INC.	525906933	INV	8/3/2020	9/2/2020	USD	280476.47	280476.47	Open	-	280476.47
124623090869	Neiman Marcus	AMAZON.COM, INC.	523389369	INV	8/3/2020	9/2/2020	USD	95.47	95.47	Open	-	95.47
									1,751,364.64		996,599.67	754,764.97